IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.781 OF 2005

Shri Parasnath Ramdular Singh,)
Age 54 years, Occ: Business,)
R/a.27/28, Om Shivam Co-op.Society,)
Cama Lane, Ghatkopar, Mumbai - 86.)..Petitioner

Vs.

The State of Maharashtra.)..Respondent

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Shri M.S.Mohite for the petitioner.

Shri B.H.Mehta, APP for the respondent.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 29th APRIL, 2005.

Oral Judgment: (Per R.M.S.Khandeparkar, J)

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner seeks to quash the proceedings in RCC No.885/P/2001 on the file of Metropolitan Magistrate, 11th Court, Kurla, Mumbai, to the extent it relates to the petitioner on the ground that there is absolutely no case against the petitioner.

3. While assailing the proceedings in the RCC No.885/P/2001, the learned Advocate for the petitioner drawing attention to the various copies of the documents alongwith chargesheet in the said proceedings as well as the affidavit filed in the present case has submitted that apart from the allegation that the petitioner is brain behind the alleged offence in respect of which a chargesheet is filed, there is absolutely no material placed on record, either in the chargesheet or in the affidavit-in-reply, which could reveal the involvement of the petitioner in some manner or otherwise in relation to the alleged offence. He has further submitted that mere allegation about the involvement or that the petitioner is brain behind the alleged offence cannot be a justification for making the petitioner to face criminal trial.

4. The learned APP, on the other hand, has submitted that the past conduct of the petitioner justifies the prosecution against him in the case in hand. He has already submitted that there are two cases in which the involvement of the petitioner is disclosed. The learned APP has also submitted that the chargesheet was filed in the year 1998 and there is inordinate delay in approaching the Court with this

petition.

5. Undoubtedly, the chargesheet was filed in the year 1998 and the petition has been filed in the year 2005. It is also well settled law that in the absence of justification for the inordinate delay, the Court need not exercise its discretionary power under Article 226 of the Constitution of India. However, the fact remains that when the materials placed before the Court ex facie disclose that the petitioner is made to face criminal trial without any justification and without there being any material against him, mere delay can hardly be a justification to reject the contention of the petitioner in limine.

6. Upon hearing the learned APP and on perusal of the records, it is also apparent that the learned Advocate for the petitioner is justified in contending that, apart from the bare allegation about the alleged involvement of the petitioner in the alleged offence or that the petitioner is allegedly brain behind the alleged offence, there is absolutely no material to support such allegation. Neither the chargesheet filed in the court below nor the affidavit placed on record in this petition remotely suggests the involvement of the petitioner in the alleged offence.

In the circumstances, the entire proceedings against the petitioner would be a futile exercise and mere harassment to the petitioner. Considering the same, there is absolutely no justification for proceeding with the criminal case against the petitioner in the case in hand.

7. For the reasons stated above, in the absence of any material in support of the allegations made against the petitioner, the proceedings in RCC No.885/P of 2001 pending on the file of the Learned Metropolitan Magistrate, 11th Court, Kurla, Mumbai, are liable to be quashed and set aside. It is made further clear that the same shall not affect the proceedings against the other accused in the said case.

8. In the result, therefore, the petition succeeds and the rule is made absolute in terms of prayer clause (A) as far as it refers to the petitioner. It is further made clear that quashing of the proceedings against the petitioner cannot affect the proceedings against the other accused in the said case. There shall be no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(P.V.KAKADE, J)